

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

APRIL TERM, 1925.

No. 4301.

211

**HELENE A. KNY, SOLE EXECUTRIX OF THE ESTATE OF
RICHARD KNY, DECEASED, APPELLANT,**

vs.

**THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN,
AND FRANK WHITE, AS TREASURER OF THE UNITED
STATES.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED MARCH 14, 1925.

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Court of Appeals of the District of Columbia.

APRIL TERM, 1925.

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THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN,
AND FRANK WHITE, AS TREASURER OF THE UNITED
STATES, APPELLEES.

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COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 4301.

HELENE E. KNY, &C., Appellant,

vs.

THOMAS W. MILLER, &C., et al.

a Supreme Court of the District of Columbia.

In Equity.

No. 40617.

HELENE A. KNY, Sole Executrix of the Estate of Richard Kny, Deceased, Plaintiff,

vs.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill of Complaint.

Filed October 16, 1922.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity.

No. 40617.

HELENE A. KNY, Sole Executrix of the Estate of Richard Kny, Deceased, Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States, Defendants.

To the Honorable Judges of the Supreme Court of the District of Columbia:

The bill of complaint of Helene A. Kny respectfully shows to the Court:

First. That she is a citizen of the United States, a resident of the State of New York, and brings this bill of complaint as the sole executrix under the last will and testament of Richard Kny, deceased, duly admitted to probate and record in the Surrogate Court for the City of Brooklyn, State of New York.

Second. The defendant, Thomas W. Miller, is a citizen of the United States of America, and a resident of Washington, in the District of Columbia and at all times since the twelfth day of March, 1921, has been and now is the duly appointed Alien Property Custodian, and is sued as such Alien Property Custodian.

Third. The defendant, Frank White, is a citizen of the United States of America, and a resident of Washington, in the District of Columbia, and is the Treasurer of the United States of America, and is sued as such Treasurer of the United States.

Fourth. That on the 24th day of April, 1919, Francis P. Garvan was the Alien Property Custodian.

Fifth. That under the last will and testament of said Richard Kny, deceased, duly admitted to probate as aforesaid, no portion of the money for which this suit is brought, if, as and when the same is received, nor any portion whatsoever of the estate of the said Richard Kny, is or shall be distributable to any person not eligible as a claimant under subsections (a) or (c) of Section 9 of the "Trading With The Enemy Act", as amended and approved June 5, 1920. That subsequent to the filing of the above mentioned will of the aforesaid Richard Kny in the said Court, all the heirs and next of kin of the said Richard Kny appeared and filed waivers to formal cita-

2 tion and their written consent to the probate of the said will as executed by the said Richard Kny.

Sixth. That complainant as the sole executrix of the estate of Richard Kny, deceased, did prior to filing of this bill of complaint, that is to say, on or about the 14th day of October, 1922, file with the Alien Property Custodian of the United States a notice of her claim, under oath (without application to the President for allowance thereof) to the proceeds of sale of the two thousand (2,000) shares of stock of the Kny-Scheerer Corporation, for which she now brings this suit.

Seventh. That Richard Kny was continuously from the 11th day of September, 1888, until the date of death on the 11th day of July, 1922, a citizen of the United States of America and a resident of the City of Brooklyn, County of Kings, and the State of New York, and was not, nor at any time an enemy or the ally of an enemy of the United States, within the meaning and purview of such terms, as used and defined in the "Trading with the Enemy Act," or in any Act amendatory thereof, or supplementary thereto, or in any proclamation or executive order issued by the President of the United States of America, pursuant to the provisions of said "Trading with the Enemy Act" or in any manner whatsoever.

Eighth. That from the time of the organization of the Kny-Scheerer Corporation in 1915, Richard Kny (who had been sole owner of the Kny-Scheerer Company, a corporation under the laws of New York, with a capitalization of \$25,000.00, that had expired by limitation in the year 1915) became the owner of the entire capital stock of the said Kny-Scheerer Corporation, a New York Corporation having authorized capital of \$200,000.00, consisting of two thousand shares of stock of the par value of \$100.00 each, evidenced by certificate #1 issued in 1915 to said Richmond Kny, who from the said date of issuance down to and on the 24th day of April, 1919 was at all times the sole owner of the shares of stock represented thereby.

Ninth. That on or about the 24th day of April, 1919, the said Francis P. Garvan, acting as such Alien Property Custodian, and claiming that such shares of capital stock were then owned by the Aktiengesellschaft fur Fein Mechanik of Tutlingn, Germany and was an enemy within the meaning of the "Trading with the Enemy Act" and required Richard Kny to transfer, assign and deliver the said two thousand shares of the stock of the Kny-Scheerer Corporation which then stood in the name of Richard Kny, to said Alien Property Custodian.

Tenth. That at or prior to said conveyance, transfer, assignment and delivery, Richard Kny duly presented his petition to the Alien Property Custodian under and pursuant to the provisions of the "Trading with the Enemy Act," requesting permission to deliver said shares of stock to him as such Alien Property Custodian, to be held, administered and accounted for as provided by law, preserving and reserving his rights thereto, and his claim that such shares of
3 property, and to make any other claim thereto which he the proceeds derived from any sale thereof, were his exclusive

might be entitled to under the laws; that said petition was granted by the Alien Property Custodian and that thereupon the two thousand shares were delivered by Richard Kny to the Alien Property Custodian, under the circumstances hereinabove set forth, and not otherwise.

Eleventh. That thereafter on or about the 24th day of April, 1919, the said Francis P. Garvan, as such Alien Property Custodian, sold the said two thousand shares of stock for the price, as complainant is informed and believes and therefore avers of \$900,000 and the net proceeds of sale thereof were paid over by him to the defendant, Frank White, as Treasurer of the United States.

Twelfth. That on information and belief the proceeds of sale of said stock have been invested by the Secretary of the Treasury of the United States, but complainant is not informed as to the exact nature of such investments nor as to the exact amount of increment which has accrued thereon.

Thirteenth. That on or about the 6th day of June, 1921 and before the commencement of this action, Richard Kny, duly made and filed with the Alien Property Custodian, notice of his claim to the proceeds of the sale of said two thousand shares of stock in conformity with the provision of Section 9, of the Trading with the Enemy Act and duly made and filed with the Attorney General, in whom the President of the United States had vested all power and authority conferred upon the President, pursuant to the provisions of Section 9 of the Trading with the Enemy Act, his application for the allowance of said claim; that more than sixty days have elapsed since the filing of such claim, and of such application for allowance thereof, and neither the President of the United States, nor the said Attorney General, has ordered the allowance thereof.

Wherefore, Complainant prays—

(1) That process of this Court be issued, directed to said Thomas W. Miller as Alien Property Custodian of the United States and said Frank White as Treasurer of the United States requiring them to appear and answer to exigencies of this bill.

(2) That the proceeds of sale of said two thousand shares of the stock of the Kny-Scheerer Corporation be declared and decreed to be the property of Complainant as executrix of the estate of Richard Kny.

(3) That the defendant Frank White as Treasurer of the United States of America, be directed to account for and pay over to the complainant the proceeds of the sale of said two thousand shares of stock of the Kny-Scheerer Corporation, together with any and all increments which may have accrued upon the same, now in his possession or custody.

(4) That the complainant have such further relief as may be proper in the premises.

HELENE A. KNY, *Ex.*

HELENE A. KNY,

Executrix of the Last Will and Testament of

Richard Kny, Deceased.

4 UNITED STATES OF AMERICA,
State of New York,
City of Brooklyn,
County of Kings, ss:

Helene A. Kny, being duly sworn, says:

That she is the complainant herein, and that she has read and knows the contents of the foregoing Bill of Complaint, and that the same are true of her own knowledge—except as to the matters stated to be alleged on information and belief, and as to those matters she believes them to be true.

HELENE A. KNY,
Ex., Executrix.

Sworn to before me this 13 day of October 1922.

[SEAL.]

KATHERINE CONKLIN,
Notary Public, Kings County, No. 348.

New York County No. 177.
 New York Register N. 3181.

Commission expires March 30, 1923.

Attorneys for Complainant:
 HOWARD FERRIS.
 RICHARD S. DOYLE.
 DION S. BIRNEY.

Answer of Defendants Thomas W. Miller and Frank White.

Filed October 31, 1922.

* * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint, and as their separate and several answers say:

(1) That they have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered First of the bill of complaint, and therefore demand strict proof thereof;

(2) They admit the averments of paragraph numbered Second of the bill of complaint;

(3) They admit the averments of paragraph numbered Third of the bill of complaint;

(4) They admit the averments of paragraph numbered Fourth of the bill of complaint;

(5) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered Fifth of

the bill of complaint, and therefore demand strict proof thereof;

(6) They admit the averments of paragraph numbered Sixth of the bill of complaint;

(7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered Seventh of the bill of complaint, and therefore demand strict proof thereof;

(8) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered Eighth of the bill of complaint, and therefore demand strict proof thereof;

(9) Answering the averments of paragraph numbered Ninth of the bill of complaint, these defendants say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, after investigation, determined that Wurttembergische Vereinsbank and Aktiengesellschaft fur Fein Mechanik of Tuttingh, Germany, were enemies within the purview and meaning of the Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, and that two thousand shares of the Kny-Scheerer Corporation, a New York corporation, were owing or belonging to, held for, by, on account of and for the benefit of one or both of the said enemies. Thereupon the Alien Property Custodian, required the said stock to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered and accounted for as provided by law. Said demand was complied with. Thereafter the Alien Property Custodian, acting under and pursuant to the terms and provisions of the said Act, the amendments thereto and the proclamations and executive orders issued thereunder, sold the said stock and received therefor approximately \$898,000, which money was deposited in the Treasury of the United States, pursuant to law.

Further answering said paragraph these defendants say that should the plaintiff herein establish any right to recover, they will render a full and exact accounting of all the money, to the end that a just and equitable decree may be rendered herein.

Further answering said paragraph these defendants say that they have no knowledge or information sufficient to form a belief with respect to the ownership of the aforementioned stock, except as set forth hereinbefore, and as to any claim of ownership or possession which the plaintiff may have to the said stock, these defendants demand strict proof thereof.

(10) The averments of paragraph numbered Tenth of the bill of complaint are immaterial and irrelevant for the purposes of this cause of action, and these defendants are not required to answer the same.

(11) For answer to the averments of paragraph numbered Eleventh of the bill of complaint, these defendants refer to their answer to paragraph numbered Ninth thereof.

(12) The averments of paragraph numbered Twelfth of the bill of complaint are immaterial and irrelevant for the purposes of

6 this cause of action, and these defendants are not required to answer the same.

(13) They admit the averments of paragraph numbered Thirteenth of the bill of complaint.

Wherefore having fully answered the bill of complaint, these defendants pray that they be dismissed with their costs in this behalf expended, and for such other and further relief to which in the premises they may be entitled.

THOMAS W. MILLER,
Alien Property Custodian.
FRANK WHITE,
Treasurer of the United States.

PEYTON GORDON,
*Attorney of the United States in
and for the District of Columbia.*

DISTRICT OF COLUMBIA, ss:

Thomas W. Miller, being first duly sworn, upon oath deposes and says that he is Alien Property Custodian of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

THOMAS W. MILLER.

Subscribed and sworn to before me this 25th day of October, 1922.
[SEAL.]

SOPHIE D. HILLMAN,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

Frank White, being first duly sworn, upon oath deposes and says that he is Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

FRANK WHITE.

Subscribed and sworn to before me this 27th day of October, 1922.
[SEAL.]

ELLA F. VAN ZANDT,
Notary Public, D. C.

Final Decree.

Filed June 25, 1923.

* * * * *

7 This cause coming on to be heard upon the questions of fact and law and the issues made by the pleadings, the bill of complaint and the answer of the defendants thereto, the exhibits and proofs, it is by the Court this 25th day of June, 1923:

Adjudged, Ordered and Decreed: 1. That the proceeds of sale by the Alien Property Custodian of the two thousand (2,000) shares of stock of the Kny-Scheerer Corporation be and it is hereby declared and decreed to be the property of Helene A. Kny, complainant herein, as executrix of the estate of Richard Kny, deceased:

2. That the said defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, be and they hereby are directed to forthwith account for and pay over to said Helen A. Kny, executrix as aforesaid, the proceeds of the sale of the said two thousand (2,000) shares of stock of the Kny-Scheerer Corporation, less the sum of forty-five hundred (\$4,500) dollars, costs of administration by said defendants as agreed between the parties hereto.

3. And it is further adjudged, ordered and decreed that the complainant is not entitled to recover the increment which has accrued upon the proceeds of said sale through investments by the Treasurer of the United States.

F. L. SIDDON, *Justice.*

I consent as to form.

DEAN HILL STANLEY,

Special Assistant to the Attorney General.

In so far as the above decree adjudges, orders and decrees that the complainant is not entitled to recover the increment which has accrued upon the proceeds of the said sale, through investments by the Treasurer of the United States, the complainant in open Court notes an appeal to the Court of Appeals of the District of Columbia. The undertaking for costs on appeal is hereby fixed at \$100, with leave to deposit \$50 cash in lieu thereof.

F. L. SIDDON, *Justice.*

Warrant for Satisfaction of Decree.

Filed July 16, 1923.

* * * * *

To the Clerk of the Supreme Court of the District of Columbia, holding an Equity Court:

Whereas Helene A. Kny, sole executrix for the estate of Richard Kny, deceased, did on the 25th day of June, 1923, obtain a decree in the Supreme Court of the District of Columbia, holding an Equity Court, against Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States of America directing the said defendants to forthwith account for and pay over to said Helene A. Kny, executrix as aforesaid, the proceeds of the sale of the two thousand (2,000) shares of stock of the Kny-Scheerer Corporation, less the sum of Forty-five hundred dollars (\$4,500), costs of administration by said defendants as agreed between the parties hereto.

And whereas the said Helene A. Kny, sole executrix of the estate of Richard Kny, deceased, has received satisfaction for the same; these are, therefore, to desire and authorize you to enter an acknowledgment of satisfaction upon the record of said decree and for your so doing, this shall be your warrant and discharge in that behalf.

In witness whereof, we, as solicitors of record of the said Helene A. Kny, sole executrix of the estate of Richard Kny, deceased, have hereunto set our hands and affixed our seals this 12 day of July, 1923.

HOWARD FERRIS.
RICHARD S. DOYLE.
DION S. BIRNEY.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Be it remembered, that on this 12 day of July, 1923, before me, the subscriber, a Notary Public of the District of Columbia, personally appeared Howard Ferris, Richard S. Doyle and Dion S. Birney, who, I am satisfied are the persons named in and executing the foregoing indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.]

JOHN P. CAGE,
Notary Public, District of Columbia.

My commission expires June 8/1927.

Memorandum.

July 16, 1923.—\$50 deposited in lieu of appeal bond.

Assignments of Error.

Filed October 6, 1923.

* * * * *

On appeal from so much of the decree rendered in the above-entitled cause of the Justice of the Supreme Court of the District of Columbia as denies to complainant any relief except the payment to her of the proceeds of the sale of the two thousand shares of stock of the Kny-Scheerer Corporation seized and sold by the Alien Property Custodian of the United States, less the sum of forty-five hundred dollars, costs of administration by said defendants, counsel for said complainant, Helene A. Kny, executrix as aforesaid, assign
9 the following as errors committed by the said Justice of the Supreme Court of the District of Columbia:

1. Denying to complainant recovery of the increment which has accrued upon the proceeds of said sale through investments by the Treasurer of the United States.

2. Denying to complainant any relief or recovery except the payment to her of the proceeds of the sale of the two thousand shares of stock of the Kny-Scheerer Corporation seized and sold by the Alien Property Custodian of the United States, less the sum of Forty-five hundred dollars costs of administration by said defendants.

HOWARD FERRIS,
RICHARD S. DOYLE,
DION S. BIRNEY,
Counsel for Complainant.

Memorandum.

October 6, 1923.—Statement of Evidence submitted, signed and filed.

Designation of Record.

Filed October 6, 1923.

* * * * *

The Clerk will please include the following in the designation of record on appeal in the above-entitled cause.

1. Bill of Complaint, filed October 16, 1922.
2. Answer of defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, filed.
3. Decree, rendered June 25, 1923.
4. Note of appeal by complainant, June 25, 1923.
5. Note of deposit by complainant of fifty dollars cash in lieu of undertaking for costs on appeal, July 16, 1923.
6. Satisfaction of decree in part, filed July 16, 1923.
7. Statement of evidence and note of the date of submission thereof and its approval.
8. Assignment of errors.
9. This designation.

HOWARD FERRIS,
RICHARD S. DOYLE,
DION S. BIRNEY,
Counsel for Complainant.

10 In the Supreme Court of the District of Columbia, Holding
an Equity Court.

In Equity.

No. 40617.

HELENE A. KNY, Sole Executrix of the Estate of Richard Kny,
Deceased, Complainant,

against

THOMAS W. MILLER, as Alien Property Custodian, and FRANK
WHITE, as Treasurer of the United States, Defendants.

Statement of the Evidence in the Above Entitled Cause taken be-
fore Mr. Justice Siddons, in the Hearing of the Cause June 23, 1923,
Settled by Consent of Counsel for Respective Parties and Approved
by the Court this 6th day of October, 1923, nunc pro tunc.

F. L. SIDDONS,

Justice.

HOWARD FERRIS,
RICHARD S. DOYLE,
DION S. BIRNEY,

Attorneys for Complainant.

DEAN HILL STANLEY,

Attorney for Defendants.

11 The undisputed evidence introduced at the trial on behalf
of the complainant and without objection on the part of the
defendants shows the following facts applicable to this bill:

1. That Richard Kny was continuously a citizen of the United
States of American from the year 1888 until the time of his decease
in July, 1922.

2. That the said Helene A. Kny, complainant herein, is the widow
of Richard Kny, deceased, and was and is the duly qualified sole
executrix of the estate of Richard Kny.

3. That the said Richard Kny was the sole owner of the two thou-
sand (2,000) shares of stock (being the entire issue of the capital
stock) of the Kny-Scheerer Corporation at the time of the seizure
and sale of the same by the Alien Property Custodian in the year
1919, and had been such sole owner thereof for a long number of
years prior to said seizure and sale.

4. And that the said Richard Kny continued to be the sole bene-
ficial owner of the proceeds of said sale of the two thousand (2,000)
shares of stock until the date of his death on the 11th day of July,
1922, and that thereafter his said executrix succeeded to and con-
tinued to hold all of said rights.

5. And that the said two thousand (2,000) shares of stock in the
Kny-Scheerer Corporation thus owned by Richard Kny, a citizen

of the United States was seized by Francis P. Garvin acting as the Alien Property Custodian of the United States, and by him sold on the 24th day of April, 1919, acting under the provisions of the act known as "Trading with the Enemy Act."

6. That the proceeds of said sale amounted to the sum of \$898,-895.22, which amount said Alien Property Custodian forthwith after said sale deposited with the Treasurer of the United States, and the same were thenceforth, until their payment over to complainant on the — day of July, 1923, carried in said Treasury Department in "Secretary's Special Deposit Account No. 8."

By stipulation in open Court at the time of trial between counsel representing the complainant and the defendants respectively, the following facts were agreed upon:

7. That the stock certificate book of the Kny-Scheerer Corporation seized and held by the Alien Property Custodian, discloses that but one certificate was ever issued, to wit: certificate No. 1 for two thousand (2,000) shares, issued to Richard Kny.

8. That in cases arising under the Trading with the Enemy Act in which the Alien Property Custodian seized securities and held or holds them in kind, the respective trust- in which they were or are held were and are credited with such increment as actually accrued and accrues on them; and that in the event of the return of such securities to American owners such actually accrued increment is paid over to such owner.

9. That in the event of a finding in favor of the complainant, there should be deducted from the amount found due and payable to said complainant the sum of forty-five hundred dollars (\$4,500) by way of costs of administering said funds while held by said defendants.

12 10. That all money seized or received by the Alien Property Custodian under the terms of the Trading with the Enemy Act and all money received by him as proceeds of sales of property seized and sold by him under the Trading with the Enemy Act, was and is deposited in the Treasury of the United States under the terms of said Act, and the Secretary of the Treasury places all such money in "Secretary's Special Deposit Account No. 8"; and all such moneys were and are held in said "Secretary's Special Deposit Account No. 8" as set forth in the affidavit of Michael J. O'Reilly, verified June 7, 1923, and included in this record. It is further stipulated that after the sale of the stock involved in the present suit, the proceeds of said sale were deposited and held in said Special Deposit Account No. 8 in the same manner.

The following affidavit was introduced in evidence by the defendants without objection by the complainant:

CITY OF WASHINGTON,

District of Columbia, ss:

The undersigned, Michael J. O'Reilly, being duly sworn according to law, deposes and says:

That he is the Chief of the Division of Bookkeeping and Warrents of the United States Treasury Department:

That there are maintained with the Treasurer of the United States two accounts known as and entitled "Secretary's Special Deposit Account No. 8" and "Secretary's Special Deposit Account No. 15," respectively:

That all moneys deposited by the Alien Property Custodian for account of trusts that have come into the possession of said Alien Property Custodian under the provisions of the Trading with the Enemy Act approved October 6, 1917, as amended, are deposited in said "Secretary's Special Deposit Account No. 8" or in said "Secretary's Special Deposit Account No. 15:"

That under authority of and in accordance with the provisions of Section 12 of the Trading with the Enemy Act Approved October 6, 1917, as amended, the Secretary invests and reinvests a large part of the money deposited in said "Secretary's Special Deposit Account No. 8" and in said "Secretary's Special Deposit Account No. 15," in United States bonds or United States certificates of indebtedness, for the purpose of investment, treating the moneys as a whole and not as an investment of funds deposited to the credit of a particular or designated trust:

That at all times there remains uninvested a sum of money sufficient in the judgment of the Secretary of the Treasury, approximately five million dollars (\$5,000,000), to make current payments requested by the Alien Property Custodian under the provisions of the Act of October 6, 1917, as amended, and the Executive Orders issued thereunder:

13 That the said income or interest earned on the moneys invested and reinvested in accordance with the said Act of October 6, 1917, as amended has not at any time been divided, allocated, or credited to any individual trusts:

That said income or interest has been treated as a whole together with moneys deposited by the Alien Property Custodian, and not separately, for the purpose of investment and reinvestment, and that it is impossible to determine what amount of income or interest, if any, the moneys deposited to the credit of a designated trust have participated in said income or interest.

(Signed)

MICHAEL J. O'REILLY.

Sworn and subscribed to before me this 7th day of June, 1923, and I hereby certify that the said Michael J. O'Reilly is personally well known to me to be the identical person mentioned in the foregoing affidavit.

(Signed)

SAMUEL H. MARKS,
Notary Public, D. C.

[Endorsed:] Equity. No. 40617. Helene A. Kny, Executrix, Complainant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States. Statement of Evidence on Appeal. The Clerk will please file. Howard Ferris, Richard S. Doyle, Dion S. Birney, Counsel for Complainant.

Filed November 25, 1924.

* * * * *

UNITED STATES OF AMERICA, ss.:

[SEAL.] The President of the United States of America to the
Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Helene A. Kny, Sole Executrix of the estate of Richard Kny, deceased, complainant, and Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, defendants, Equity No. 40,617, wherein the decree of the said Supreme Court entered in said cause on the 25th day of June, A. D. 1923, is in the following words, viz:

This cause coming on to be heard upon the questions of fact and law and the issues made by the pleadings, the bill of complaint and the answer of the defendants thereto, the exhibits and proofs, it is by the Court this 25th day of June, 1923:

Adjudged, Ordered and Decreed:

1. That the proceeds of sale by the Alien Property Custodian of the two thousand (2,000) shares of stock of the Kny-Scheerer Corporation be and it is hereby declared and decreed to be the property of Helene A. Kny, complainant herein, as executrix of the estate of Richard Kny, deceased:

2. That the said defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, be and they hereby are directed to forthwith account for and pay over to said Helen A. Kny, executrix as aforesaid, the proceeds of the sale of the said two thousand (2,000) shares of stock of the Kny-Scheerer Corporation, less the sum of forty-five hundred (\$4,500) dollars, costs of administration by said defendants as agreed between the parties hereto.

3. And it is further adjudged, ordered and decreed that the complainant is not entitled to recover the increment which has accrued upon the proceeds of said sale through investments by the Treasurer of the United States.

F. L. SIDDON, *Justice.*

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-four, the said cause

came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, modified so as to allow the plaintiff under the interpretation placed upon the act by the Attorney General to recover the net income, interest, annuity, or other earnings, which accrued or were collected between the date of the passage of the Act, March 4, 1923, and the date when payment of the principal amount was made to plaintiff; And as so modified the decree is affirmed with costs, and that the said defendants recover against the said complainant; Helene A. Kny, Sole Executrix of the Estate of Richard Kny, deceased, for their costs herein expended and have execution therefor.

16 And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

November 3, 1924.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable George E. Martin, Chief Justice of said Court of Appeals, the 25th day of November, in the year of our Lord one thousand nine hundred and twenty-four.

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Costs of defendants: Clerk, —; Attorney, —; Printing Record, —, paid.

Decree.

Filed November 28, 1924.

* * * * *

17 This cause coming on now to be further heard, and it appearing that the plaintiff having heretofore appealed to the Court of Appeals of the District of Columbia, from the final decree made by this Court in this cause on the 25th day of June, 1923, and said Court of Appeals at its October, 1924, Term having duly heard said appeal and having thereupon adjudged, ordered and decreed that said decree of this Court be modified so as to allow the plaintiff to recover the net income, interest, annuity, or other earnings which accrued or were collected between the date of the passage of the Act of March 4, 1923, and the date when payment of the principal amount was made to the plaintiff, and that as so modified said decree of this Court be affirmed, with costs, and that this cause be

remanded to this Court for further proceedings not inconsistent with the opinion of said Court of Appeals and the said mandate of said Court of Appeals dated November 3, 1924, having been duly filed herein on the 25th day of November, 1924 it is, in conformity with said mandate, this 28th day of November, 1924.

Adjudged, ordered and decreed, that said defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, be and they hereby are directed to forthwith account for and pay over to said Helene A. Kny, Executrix, as aforesaid, the net income, interest, annuity, or other earnings which accrued or were collected upon the principal amount sued for, between the date of March 4, 1923, and the date when payment of said principal amount was made to plaintiff, and that in all other respects said plaintiff is entitled to no further relief.

WILLIAM HITZ,
Justice.

18 I consent to the form of the above.
DEAN HILL STANLEY,
Attorney for Defendants.

In so far as the above decree denies to the plaintiff any relief other than the net income, interest, annuity, or other earnings which accrued or were collected upon the principal fund sued for, between March 4, 1923, and the date when payment of said principal amount was made to plaintiff, said plaintiff, in open Court, notes an appeal to the Court of Appeals of the District of Columbia. The undertaking for costs on appeal is hereby fixed at one hundred dollars (\$100), with leave to deposit fifty dollars (\$50) cash in lieu thereof.

WILLIAM HITZ,
Justice.

Memorandum

November 28, 1924.—\$50 deposited in lieu of Appeal Bond.

Assignments of Error.

Filed January 7, 1925.

* * * * *

On appeal from so much of the decree rendered November 28, 1924, in the above entitled cause by the Justice of the Supreme Court of the District of Columbia as denies to complainant any relief other than the net income, interest, annuity, or other earnings which accrued or were collected upon the principal fund sued for between March 4, 1923, and the date when payment of said principal amount was made to complainant, counsel for said complainant, Helene A. Kny, executrix as aforesaid, assign the following as errors committed by the said Justice of the Supreme Court of the District of Columbia:

19 1. Denying to complainant recovery of the net income, interest, annuity, or other earnings which accrued or were collected prior to

March 4, 1923, upon the proceeds of said sale (the principal fund sued for in this cause) through investments by the Treasurer of the United States or by the Secretary of the Treasury or by any other officer of the United States.

2. Denying to complainant any compensation of any kind whatsoever for the period or any part thereof between the date of seizure by the Alien Property Custodian of the United States of the said two thousand shares of stock of the Kny-Scherer Corporation and March 4, 1923, for the seizure and retention of said property and of the proceeds of its sale from complainant and her testator.

3. Denying to complainant any relief or recovery except as set forth in the decrees of said Court dated June 25, 1923, and November 28, 1924.

HOWARD FERRIS,
RICHARD S. DOYLE,
DION S. BIRNEY,
Counsel for Complainant.

20

Designation of Record.

Filed January 7, 1925.

* * * * *

The Clerk will please include the following in the designation of record on appeal in the above-entitled cause:

1. Bill of Complaint, filed October 16, 1922.
2. Answer of defendants, Thomas W. Miller, as Alien Property Custodian and Frank White, as Treasurer of the United States, filed October 31, 1922.
3. Decree, rendered June 25, 1923.
4. Note of appeal by complaint, June 25, 1923.
5. Note of deposit by complainant of fifty dollars in cash in lieu of undertaking for costs on appeal, July 16, 1923.
6. Satisfaction of decree in part, filed July 16, 1923.
7. Statement of evidence and note of date of submission thereof and its approval.
8. Assignment of errors, filed October 6, 1923.
9. Designation of record, filed October 6, 1923.
10. Mandate of the Court of Appeals of the District of Columbia, filed November 25, 1924.
11. Final decree, rendered November 28, 1924.
- 21 12. Note of appeal by complainant, November 28, 1924.
13. Note of deposit by complainant of fifty dollars cash in lieu of undertaking for costs on appeal, November 28, 1924.
14. Assignment of errors, filed January 7, 1925.
15. This designation.

HOWARD FERRIS,
RICHARD S. DOYLE,
DION S. BIRNEY,
Counsel for Complainant.

22 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 21, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed copy of which is made part of this transcript in cause No. 40617 in Equity, wherein Helene A. Kny, sole executrix of the estate of Richard Kny, deceased, is plaintiff and Thomas W. Miller, as Alien Property Custodian and Frank White, as Treasurer of the United States, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of February, 1925.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH.

Clerk.

EW.

Endorsed on cover: District of Columbia Supreme Court. No. 4301. Helene E. Kny, &c., appellant, vs. Thomas W. Miller, &c., et al. Court of Appeals, District of Columbia. Filed Mar. 14, 1925. Henry W. Hodges, clerk.

